

EXHIBIT

DATE

SD

MONTANA  
Form CLT-4  
Rev. 8-03

## 2003 Corporation License Tax Return

For calendar year 2003 or tax year beginning 2003, ending 20

Check if applicable  Initial Return  Final Return	Corporation Name	FEIN
	Address	Federal Business Code
	City	Incorporated in State of
	State	Date
	Zip +4	Date Qualified in Montana
Reporting Method: Cash <input type="checkbox"/> Accrual <input type="checkbox"/> Other (please specify)		

1. Taxable income per federal return (line 28) (copy of Federal Form 1120 must be attached) ..... 1. Line 28, Form 1120
2. Add: a. Montana corporation license tax (attach breakdown of Federal Form 1120 line 17) 2a Line 17, Form 1120  
 b. Other state, local, foreign, and franchise taxes based on income ..... 2b Line 17, Form 1120  
 c. Federal tax exempt interest ..... 2c Line 7, Sch. M-1, Form 1120  
 d. Contributions used to compute qualified endowment credit Included on line 19, Form 1120  
 e. Extraterritorial income exclusion ..... 2e Form 8873, line 52 - carries to line 26, Form 1120  
 f. Other additions (a detailed breakdown must be attached) ..... 2f

## Total additions

3. Subtract: a. IRC Section 243 dividend received deduction Schedule C, Form 1120 - based on line 17, Form 1120  
 b. Nonbusiness income (a detailed breakdown must be attached) ..... 3b various lines on Form 1120, if applicable  
 c. Other reductions (a detailed breakdown must be attached) capital losses on line 8, Form 1120  
 d. Montana recycling deduction (attach Form RCYL-CT) ..... 3d not tied directly to federal return

## Total reductions

4. Adjusted taxable income (line 1 + line 2 - line 3) ..... 4.
5. Income apportioned to Montana (line 4 x \_\_\_\_\_ % from Schedule K, line 5) multi-state taxpayers only ..... 5.
6. Income allocated directly to Montana (multi-state taxpayers only; a detailed breakdown must be attached) ..... 6.
7. Montana taxable income before net operating loss (line 5 + line 6 or enter amount reported on line 4) ..... 7.
- If line 7 is a loss, do you wish to forego the net operating loss carryback provision? ☐ Yes ☐ No
- \*If a loss is reported on line 7 and neither box is checked, the loss must be carried back.
8. Montana net operating loss carryover (a detailed schedule must be attached) ..... 8.
9. Montana taxable income (line 7 - line 8) ..... 9.
10. Montana tax liability (line 9 x 6.75%; line 9 x 7% for those corporations electing a water's edge filing) ..... 10.
- Not to be less than the minimum tax liability of \$50; minimum tax applies to each corporation with Montana activity ☐ Alternative Tax
11. Subtract: a. 2002 overpayment ..... 11a  
 b. Tentative payment ..... 11b  
 c. Quarterly estimated tax payments ..... 11c

## Total payments

12. Subtract: Credits (from Schedule C) ..... 12.
13. Tax due (line 10 - line 11 - line 12 - send your payment with the coupon provided in the booklet) ..... 13.
14. Interest from due date @ 12% per annum ..... 14.
15. Estimated tax underpayment interest penalty (attach Form CLT-4UT) ☐ Check box for annualized income or adjusted seasonal income method. .... 15.
16. Penalty: a. Late filing penalty (see instructions) ..... 16a  
 b. Late payment penalty (see instructions) ..... 16b
- Total penalty payment ..... 16.
17. Total due or overpayment (line 13 + 14 + 15 + 16) ..... 17.
18. Overpayment to be credited to 2004 estimated tax ..... 18.
19. Refund due ..... 19.

☐ Check here if you do not need the Montana Corporate License Tax Return and instructions sent to you next year.

Please answer all questions on page 2 of this form

## Declaration

This return must be signed by one of the following: president, vice-president, treasurer, assistant treasurer, or chief accounting officer. I, the undersigned officer of the corporation for which this return is made, hereby declare that this return, including all accompanying schedules and statements, is, to the best of my knowledge and belief, a true, correct and complete return, made in good faith for the income period stated, pursuant to the Montana corporation license tax law and regulations.

Signature of officer

Date

Name of person or firm preparing return

Date

Title

Telephone number

Address and Zip Code

Telephone number

Copy of Federal Form 1120 Must be Attached

Attach remittance payable to Department of Revenue

Preparer's ID

## Schedule K

FEIN

Year

## Apportionment Factors for Multistate Taxpayers

	A. Everywhere	B. Montana	C. Factor (B divided by A = C)
Property Factor:			
Use average value for real and tangible personal property		not specifically	
Land ..... Line 12, Schedule L, Form 1120		from Form 1120, federal	return
Buildings ..... Line 10a, Schedule L, Form 1120			
Machinery .....			
Equipment .....			
Furniture and fixtures .....			
Inventories ..... Line 3, Schedule L, Form 1120			
Supplies and other ..... Line 6, Schedule L, Form 1120			
Rents x 8 ..... Line 16, Form 1120 or Line 5, Sch. A, Form 1120			
Total Property .....			%

## 2. Payroll Factor:

Compensation of officers ..... Line 12, Form 1120 (carried from line 4, Sch. E, Form 1120)		
Salaries and wages ..... Line 13, Form 1120		
Payroll included in:		
Costs of goods sold ..... Line 3, Sch. A, Form 1120		
Repairs ..... Line 14, Form 1120		
Other deductions ..... Line 26, Form 1120		
Total Payroll .....		%

## 3. Sales (Gross Receipts) Factor:

Gross sales, less returns ..... Line 10, Form 1120		
Other (attach schedule) ..... would come from specific lines on Form 1120, such as lines 6, 7, 9, 10		
Total Sales .....		%

4. Sum of Factors (add lines 1, 2, and 3) ..... %

## 5. Apportionment Factor (1/3 of line 4; if less than 3 factors exist, see instructions)

(enter here and on line 5, page 1) ..... %

The following questions are required of multistate taxpayers only (circle yes or no).

- Yes No 1. Did you at the end of the taxable year own, directly or indirectly, 50% or more of the outstanding voting stock of a domestic corporation? If "yes," attach a schedule showing name, address, and percentage owned. Line 3, Schedule K, Form 1120
- Yes No 2. Were you a U.S. shareholder of any controlled foreign corporation? If "yes," you must attach a schedule showing name, address, and percentage owned.
- Yes No 3. Did any individual, partnership, corporation, estate, or trust at the end of the taxable year own, directly or indirectly, 50% or more of your voting stock? If "yes," you must attach a schedule showing name, address, and percentage owned. Line 5, Schedule K, Form 1120
- Yes No 4. If the answer to question 3 is "yes," did the same individual, partnership, corporation, estate, or trust at the end of the taxable year also own, directly or indirectly, 50% or more of the voting stock of another (brother-sister) corporation? If "yes," you must attach a schedule of the other corporate entity(ies).
5. Check applicable filing method: (Please note: Combined filings are required for all members of a "unitary" group.)
- \_\_\_\_\_ Separate Company Apportionment
- \_\_\_\_\_ Separate Accounting
- \_\_\_\_\_ Worldwide Combination
- \_\_\_\_\_ Domestic Combination
- \_\_\_\_\_ Limited Combination
- \_\_\_\_\_ Water's Edge Return (must have a valid election)

**§ 6101. Period covered by returns or other documents.**

When not otherwise provided for by this title, the Secretary may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made.

(Aug. 16, 1954, ch 736, 68A Stat. 753; Oct. 4, 1976, P. L. 94-455, Title XIX, § 1906(b)(13)(A), 90 Stat. 1834.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES****Amendments:**

In 1976, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" in Code Sec. 6101, effective 2/1/77.

**CODE OF FEDERAL REGULATIONS**

Internal Revenue Service, Department of the Treasury—Excise tax procedural regulations, 26 CFR Part 40.

Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury—Manufacturers excise taxes—firearms and ammunition, 27 CFR Part 53.

**INTERPRETIVE NOTES AND DECISIONS**

Object of payment on account of income tax, and its consequent allocation to taxes assessed for various periods, is in each instance defined by the intention of taxpayer, to be ascertained from all relevant facts and circumstances: to determine such intention court may look to returns filed, even though they erroneously

embraced period which did not coincide with the fiscal period for which return was prescribed. *American Hide & Leather Co. v United States* (1932) 284 US 343, 76 L Ed 331, 52 S Ct 154, 3 USTC ¶ 855, 10 AFTR 775.

**§ 6102. Computations on returns or other documents.**

(a) **Amounts shown on Internal Revenue forms.** The Secretary is authorized to provide with respect to any amount required to be shown on a form prescribed for any internal revenue return, statement, or other document, that if such amount of such item is other than a whole-dollar amount, either—

- (1) the fractional part of a dollar shall be disregarded; or
- (2) the fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by \$1.

(b) **Election not to use whole dollar amounts.** Any person making a return, statement, or other document shall be allowed, under regulations prescribed by the Secretary, to make such return, statement, or other document without regard to subsection (a).

(c) **Inapplicability to computation of amount.** The provisions of subsections (a) and (b) shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

(Aug. 16, 1954, ch 736, 68A Stat. 753; Oct. 4, 1976, P. L. 94-455, Title XIX, § 1906(b)(13)(A), 90 Stat. 1834.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES****Amendments:**

In 1976, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in Code Sec. 6102, effective 2/1/77.

**CODE OF FEDERAL REGULATIONS**

Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury—Manufacturers excise taxes—firearms and ammunition, 27 CFR Part 53.

Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury—Procedure and administration, 27 CFR Part 70.

**RESEARCH GUIDE****Am Jur:**

33 Am Jur 2d, Federal Taxation (2002) § 1716.

**§ 6103. Confidentiality and disclosure of returns and return information.**

(a) **General rule.** Returns and return information shall be confidential, and except as authorized by this title—

- (1) no officer or employee of the United States,
- (2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency

administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section, and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), paragraph (6), (12), or (16) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

(b) **Definitions.** For purposes of this section—

(1) **Return.** The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) **Return information.** The term "return information" means—

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

(C) any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement, and

(D) any agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement,

but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

(3) **Taxpayer return information.** The term "taxpayer return information" means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

(4) **Tax administration.** The term "tax administration"—

(A) means—

(i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and

(ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and

(B) includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions.

(5) **State.** The term "State" means—

(A) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and

(B) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p) any municipality—

(i) with a population in excess of 250,000 (as determined under the most recent decennial United States census data available),

(ii) which imposes a tax on income or wages, and

(iii) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure.

(6) **Taxpayer identity.** The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

or the General Accounting Office or the Congressional Budget Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission including an agency or any other person described in subsection (l)(16) or (17), or the General Accounting Office or the Congressional Budget Office until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under paragraph (2), (4), (6), or (7) of subsection (m) and which discloses any such mailing address to any agent, or which receives any information under paragraph (6)(A), (12)(B) or (16) of subsection (l) and which discloses any such information to any agent, or any person including an agent described in subsection (l)(16), this paragraph shall apply to such agency and each such agent or other person (except that, in the case of an agent, or any person including an agent described in subsection (l)(16), any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency). For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term "return information" includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act).

(5) **Report on procedures and safeguards.** After the close of each calendar year, the Secretary shall furnish to each committee described in subsection (f)(1) a report which describes the procedures and safeguards established and utilized by such agencies, bodies, or commissions, the General Accounting Office, and the Congressional Budget Office for ensuring the confidentiality of returns and return information as required by this subsection. Such report shall also describe instances of deficiencies in, and failure to establish or utilize, such procedures.

(6) **Audit of procedures and safeguards.** (A) Audit by Comptroller General. The Comptroller General may audit the procedures and safeguards established by such agencies, bodies, or commissions and the Congressional Budget Office pursuant to this subsection to determine whether such safeguards and procedures meet the requirements of this subsection and ensure the confidentiality of returns and return information. The Comptroller General shall notify the Secretary before any such audit is conducted.

(B) Records of inspection and reports by the Comptroller General. The Comptroller General shall—

(i) maintain a permanent system of standardized records and accountings of returns and return information inspected by officers and employees of the General Accounting Office under subsection (i)(8)(A)(ii) and shall, within 90 days after the close of each calendar year, furnish to the Secretary a report with respect to, or summary of, such records or accountings in such form and containing such information as the Secretary may prescribe, and

(ii) furnish an annual report to each committee described in subsection (f) and to the Secretary setting forth his findings with respect to any audit conducted pursuant to subparagraph (A).

The Secretary may disclose to the Joint Committee any report furnished to him under clause (i).

(7) **Administrative review.** The Secretary shall by regulations prescribe procedures which provide for administrative review of any determination under paragraph (4) that any agency, body, or commission described in subsection (d) has failed to meet the requirements of such paragraph.

(8) **State law requirements.** (A) **Safeguards.** Notwithstanding any other provision of this section, no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless such State adopts provisions of law which protect the confidentiality of the copy of the Federal return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.

(B) **Disclosure of returns or return information in state returns.** Nothing in subparagraph (A) shall be construed to prohibit the disclosure by an officer or employee of any State of any copy of any portion of a Federal return or any information on a Federal return which is required to be attached or included in a State return to another officer or employee of such State (or political subdivision of such State) if such disclosure is specifically authorized by State law.

(q) **Regulations.** The Secretary is authorized to prescribe such other regulations as are necessary to carry out the provisions of this section.

(Aug. 16, 1954, ch 736, 68A Stat. 753; Sept. 2, 1964, P. L. 88-563, § 3(c), 78 Stat. 844; June 21, 1965, P. L. 89-44, Title VI, § 601(a), 79 Stat. 153; Nov. 2, 1966, P. L. 89-713, § 4(a), 80 Stat. 1109; Sept. 2, 1974, P. L. 93-406, Title II, § 1022(h), 88 Stat. 941; Jan. 2, 1976, P. L. 94-202,

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## SENATE BILL NO. 76

INTRODUCED BY K. GILLAN

BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE AND THE REVENUE AND  
TRANSPORTATION INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS GOVERNING ACCESS TO TAX  
INFORMATION; PROVIDING FOR ACCESS TO ~~ALL~~ CERTAIN TAX INFORMATION BY THE LEGISLATIVE  
FISCAL DIVISION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING; REQUIRING  
CONFIDENTIALITY OF FEDERAL RETURN INFORMATION; REQUIRING THAT CONFIDENTIAL  
INFORMATION DISCLOSED TO THE LEGISLATIVE FISCAL DIVISION AND THE OFFICE OF BUDGET AND  
PROGRAM PLANNING BE SUBJECT TO RESTRICTIONS ON DISCLOSURE; CLARIFYING THE  
AUTHORIZED DISCLOSURE OF CERTAIN CORPORATION TAX INFORMATION; CLARIFYING PENALTIES  
FOR UNAUTHORIZED DISCLOSURE; AMENDING SECTIONS 5-12-303, 15-30-303, 15-31-511, 17-1-132, AND  
17-7-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Federal return information.** (1) Except as provided by section 6103 of  
the Internal Revenue Code, 26 U.S.C. 6103, and subsection (2) of this section, it is unlawful to knowingly or  
purposely divulge or make known in any manner any federal tax return or federal tax return information submitted  
on state tax returns pursuant to state law.

(2) The department shall furnish state return information to the legislative auditor, THE legislative fiscal  
analyst PURSUANT TO 5-12-303, and the office of budget and program planning ~~upon request~~ PURSUANT TO  
17-7-111, unless the furnishing of the information requested is specifically prohibited by federal or state law. THE  
LEGISLATIVE FISCAL ANALYST AND THE OFFICE OF BUDGET AND PROGRAM PLANNING MAY DISCLOSE STATE RETURN  
INFORMATION TO EACH OTHER. State return information includes information on or a copy of any portion of a federal  
return or any information from a federal return that is required to be attached or included in a state return under  
state law.

(3) INCOME TAX INFORMATION HELD BY THE DEPARTMENT, THE LEGISLATIVE AUDITOR, THE LEGISLATIVE FISCAL  
ANALYST, AND THE OFFICE OF BUDGET AND PROGRAM PLANNING ARE SOLELY FOR THEIR OFFICIAL USE AND ARE NOT A

1 PUBLIC RECORD.

2 ~~(3)~~(4) A person convicted of violating this section shall be fined not to exceed \$1,000 or be imprisoned  
3 in the county jail for a term not to exceed 1 year, or both. If a public officer or employee is convicted of violating  
4 this section, the person is dismissed from office or employment and may not hold any public office or public  
5 employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for  
6 1 year after conviction.

7  
8 **Section 2.** Section 5-12-303, MCA, is amended to read:

9 **"5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst may  
10 investigate and examine the costs and revenue of state government activities and may examine and obtain copies  
11 of the records, books, and files of any state agency, including confidential records ~~and tax records.~~

12 (2) When confidential records and information are obtained from a state agency, the legislative fiscal  
13 analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records  
14 and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall  
15 develop policies to prevent the unauthorized disclosure of confidential records and information obtained from  
16 state agencies.

17 ~~(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under~~  
18 ~~45-30-303. The department of revenue shall make individual income tax data available by removing names,~~  
19 ~~addresses, occupations, social security numbers, and taxpayer identification numbers. The department of~~  
20 ~~revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are~~  
21 ~~individual income tax returns.~~

22 (3) (A) THE DEPARTMENT OF REVENUE SHALL MAKE MONTANA INDIVIDUAL INCOME TAX INFORMATION AVAILABLE  
23 BY REMOVING NAMES, ADDRESSES, AND SOCIAL SECURITY NUMBERS AND SUBSTITUTING IN THEIR PLACE A STATE  
24 ACCOUNTING RECORD IDENTIFIER NUMBER. EXCEPT FOR THE PURPOSES OF COMPLYING WITH FEDERAL LAW, THE  
25 DEPARTMENT MAY NOT ALTER THE DATA IN ANY OTHER WAY.

26 (B) THE DEPARTMENT OF REVENUE SHALL PROVIDE THE NAME AND ADDRESS OF A TAXPAYER ON WRITTEN  
27 REQUEST OF THE LEGISLATIVE FISCAL ANALYST WHEN THE VALUES ON THE REQUESTED RETURN, INCLUDING ESTIMATED  
28 PAYMENTS, ARE CONSIDERED NECESSARY BY THE LEGISLATIVE FISCAL ANALYST TO PROPERLY ANALYZE STATE REVENUE  
29 AND ARE OF A SUFFICIENT MAGNITUDE TO MATERIALLY AFFECT THE ANALYSIS AND WHEN THE IDENTITY OF THE TAXPAYER  
30 IS NECESSARY TO EVALUATE THE EFFECT OF THE RETURN OR PAYMENTS ON THE ANALYSIS BEING PERFORMED.

No. 05-336

IN THE SUPREME COURT OF THE STATE OF MONTANA

2006 MT 267

JIM ELLIOTT,

Petitioner and Appellant,

v.

MONTANA DEPARTMENT OF REVENUE,

Respondent and Respondent,

and

MONTANA TAXPAYERS' ASSOCIATION,

Intervenor.

FILED

OCT 24 2006

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

APPEAL FROM: The District Court of the First Judicial District,  
In and For the County of Lewis and Clark, Cause No. CDV 2004-777,  
Honorable Thomas C. Honzel, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Peter Michael Meloy (argued), Robin A. Meguire, Meloy Trieweler,  
Helena, Montana

For Respondent:

David L. Ohler (argued), Special Assistant Attorney General,  
Helena, Montana

For Intervenor:

John Alke (argued), Cherche Prezeau, Hughes, Kellner, Sullivan & Alke,  
Helena, Montana



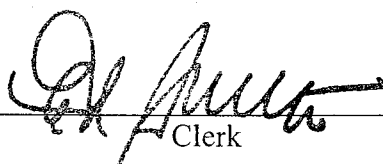
For Amicus Curiae:

Elizabeth L. Griffing, Visiting Assistant Professor, University of  
Montana School of Law, Missoula, Montana

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Heard at Oral Argument: May 3, 2006  
Submitted: June 13, 2006  
Decided: October 24, 2006

Filed:



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Clerk

Justice Patricia O. Cotter delivered the Opinion of the Court.

¶1 State Senator Jim Elliott (Elliott) requested certain state tax information from the Montana Legislative Auditor (Auditor) for “C” corporations doing business in Montana. The Auditor, based on information provided by the State Department of Revenue (DOR), compiled the requested information for tax year 2002 and provided it to Elliott. Later, DOR denied the Auditor and Elliot access to similar tax information for other tax years. Elliott filed a Petition to Obtain Public Documents (Petition), which the District Court denied. Elliott appeals. We affirm.

### ISSUE

¶2 The restated issue on appeal is:

Did the District Court err when it denied public disclosure of Montana “C” corporations’ state tax records?

### FACTUAL AND PROCEDURAL BACKGROUND

¶3 In January 2004, Elliott, in his capacity as Chairman of the Senate Taxation Committee and Vice-chairman of the Legislative Audit Committee, requested tax information for “C” corporations with \$1,000,000.00 or more in Montana sales for all tax years for which DOR had the information. Elliott sought the information because he believed a “responsible legislator needs to be informed so as to make responsible and accurate decisions on the part of the public.”

¶4 Initially, Elliott asked the Auditor to provide him with tax information about all corporations that paid less than \$150.00 in Montana taxes in 2002. After inspecting the information, Elliott requested tax information for the top 500 “C” corporations in terms

of Montana sales. (See "C" corporation definition at § 15-30-101(3), MCA.) DOR provided the information to the Auditor on Elliott's behalf. The Auditor compiled for Elliott spreadsheets containing information for tax year 2002. Corporate taxpayers, however, were not identified by name on the spreadsheets.

¶5 Elliott then researched the identities of some of the corporations by matching up the tax information he received for 2002 with financial information he located on the internet from such sources as the U.S. Securities Exchange Commission's published filings and corporate financial reports. Elliott disclosed the results of his research to his constituents and other Montana citizens.

¶6 Elliott testified that "the compelling reason for the people of the state of Montana [to have access to state corporate tax records] is that a just, equitable taxation policy is important. For every dollar that one person avoids illegally . . . in paying taxes, the citizens of the state of Montana make up for that in increased taxes or in decreased services." Subsequently, Elliott reiterated his request for tax records from all available tax years. DOR refused Elliott's request because he had disclosed to the public corporate tax information previously provided.

¶7 Elliott petitioned the District Court to order disclosure of the state corporate tax records. On April 6, 2005, the District Court denied Elliott's Petition after holding an evidentiary hearing on November 23, 2004, and oral arguments on February 11, 2005. Elliott appeals.

## STANDARD OF REVIEW

¶8 We review a district court's conclusion of law regarding a constitutional question to determine whether it is correct. *Bryan v. District*, 2002 MT 264, ¶ 16, 312 Mont. 257, ¶ 16, 60 P.3d 381, ¶ 16.

## DISCUSSION

¶9 *Did the District Court err when it denied public disclosure of Montana "C" corporations' state tax records?*

¶10 Elliott invokes the right to know provisions of Article II, Section 9, of the Montana Constitution in support of his contention that state corporate tax records are subject to public disclosure. Article II, Section 9 provides:

**Right to know.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

However, state law prohibits the disclosure of tax records provided to DOR by Montana corporate taxpayers. Section 15-31-511, MCA, provides:

**Confidentiality of tax records.** (1) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

¶11 In briefs to this Court, Elliott highlights the conflict between the provisions of Article II, Section 9, and § 15-31-511, MCA, but dismisses the statute by arguing that,

“Obviously, state statutory law must yield to constitutional law.” We agree with this cardinal premise. However, statutes are presumed constitutional absent proof beyond a reasonable doubt to the contrary. *Ravalli County v. Erickson*, 2004 MT 35, ¶ 17, 320 Mont. 31, ¶ 17, 85 P.3d 772, ¶ 17 (citation omitted).

¶12 Notably, Elliott has mounted no constitutional challenge—either facial or as applied—to invalidate § 15-31-511, MCA. Indeed, Elliott’s counsel stated unequivocally, both in briefs to this Court and during oral argument, that Elliott does *not* challenge the constitutionality of the statutory prohibition on disclosure of corporate tax information. Rather, he views the statute as “a nullity” in light of case law interpreting Article II, Section 9.

¶13 Elliott seeks precisely the information the disclosure of which is directly prohibited by § 15-31-511(1), MCA. Elliott asked the District Court to order disclosure of information for “C” corporations with \$1,000,000.00 or more in Montana sales, including: the name of the corporation; Montana sales; total sales; Montana property; total property; Montana payroll; total payroll; apportionment factor; adjusted taxable income; Montana taxable income before net operating loss; Montana taxable income; Montana corporate tax liability; and the date the tax return was received. While Elliott concedes the statute prohibits such disclosure, he maintains that the constitutional right to know in essence “trumps” these statutory restrictions, and that we may so rule without *per se* declaring the statute unconstitutional.

¶14 The Legislature has exercised its constitutional power to enact a statute. Article V, Section 1, Montana Constitution. The role of the courts in construing a statute is well

established. We are to ascertain a statute's terms and substance, but we are not to insert what has been omitted or omit what has been inserted. Section 1-2-101, MCA. Thus, we may not simply disregard the provisions of a duly enacted statute unless we first conclude that it is unconstitutional.

¶15 As already stated, the unconstitutionality of a statute must be demonstrated beyond a reasonable doubt. *Ravalli County*, ¶ 17. In that no demonstration of unconstitutionality has been offered—much less proven—here, we may not declare this statute unconstitutional, nor will we undertake to do so *sua sponte*. Absent a successful constitutional challenge to the propriety of a statute, we are obligated to apply it. *State v. Finley*, 276 Mont. 126, 149, 915 P.2d 208, 223 (1996) (*Gray, J., specially concurring*).

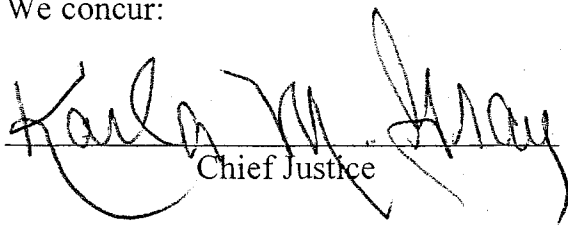
¶16 Without a direct constitutional challenge to § 15-31-511, MCA, we have no basis for confronting, much less disturbing, its prohibition on disclosure of state corporate tax records. Therefore we conclude we cannot grant the relief Elliott seeks.


### CONCLUSION

¶17 For the foregoing reason, we affirm.

  
Justice

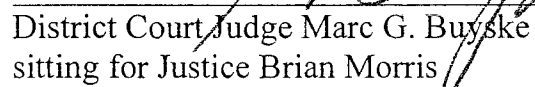
We concur:

  
Chief Justice





  
Justices

  
District Court Judge Marc G. Buyske  
sitting for Justice Brian Morris

Justice John Warner concurs.

¶18 I concur with the result of the Court's opinion. I write to address the reason Elliott claims it is not necessary to find § 15-31-511, MCA, unconstitutional in order to secure the tax information he prays for.

¶19 Senator Elliott argues the "or as otherwise provided by law" exception in § 15-31-511(1), MCA, renders the statute ineffective because "law" includes Article II, Section 9 of the Montana Constitution.<sup>1</sup>

¶20 Section 15-31-511(1), MCA, provides:

Except as provided in this section in accordance with a proper judicial order  
*or as otherwise provided by law*, it is unlawful to divulge or make known in  
any manner[.]

(Emphasis added.) Elliott points out that the "or as otherwise provided by law" exception in § 15-31-511, MCA, encompasses the Montana Constitution's Right to Know provision, Article II, Section 9, which is set forth at ¶ 10 of the Court's Opinion. Although what constitute "documents . . . of all public bodies" is not defined in Article II, Section 9, this Court has interpreted the phrase to encompass "documents generated or maintained by a public body which are somehow related to the function and duties of that body." *Becky v. Butte-Silver Bow Sch. Dist. No. 1*, 274 Mont. 131, 138, 906 P.2d 193, 197 (1995). Thus, Article II, Section 9, is applicable to "public documents." *Becky*, 274 Mont. at 138, 906 P.2d at 197.

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<sup>1</sup> This argument is clearly articulated in Elliot's opening brief to the District Court, as well as his appellate briefs and oral argument before this Court.



¶21 The only limitation on the constitutional right to view public documents, according to Elliott, is an individual's constitutional right to privacy. Elliott goes on to point out that this Court has held that a for-profit corporation has no individual right to privacy under the Montana Constitution. *Great Falls Tribune v. Mont. Pub. Serv. Commn.*, 2003 MT 359, ¶ 39, 319 Mont. 38, ¶ 39, 82 P.3d 876, ¶ 39. Thus, Elliott adroitly argues that there is a loop-hole in the law which requires that the public be able to examine a for-profit corporation's tax records. This is because Article II, Section 9, is a law which provides that the tax records of for-profit corporations are available to the public, and thus the exception in § 15-31-511(1), MCA, applies to abrogate the statute's requirement of confidentiality.

¶22 Under this interpretation, the exception in § 15-31-511(1), MCA, would render the statute ineffective. Elliott's counsel did not dispute this conclusion at oral argument, and acknowledged that the exception essentially swallows the statute. He pointed out, however, that the statute was effective until this Court's decision in *Great Falls Tribune*.<sup>2</sup>

¶23 I do not conclude that the exception to § 15-31-511(1), MCA, renders the statute without effect. An interpretation that gives effect to a statute is always preferred to one that makes a statute void or treats a statute as mere surplusage. *Missoula Rural Fire Dist. v. Missoula Co.*, 222 Mont. 178, 182, 720 P.2d 1170, 1173 (1986).

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<sup>2</sup> *Mt. States Tel. and Telegraph Co. v. Dept. of Pub. Serv. Reg.*, 194 Mont. 277, 288, 634 P.2d 181, 188 (1981) (assuming the framers of Article II, Sections 9 and 10 surely intended non-human entities to have the same constitutional rights to privacy as do human individuals). *Mt. States* was overruled by *Great Falls Tribune*, ¶ 38.

¶24 Even assuming, *arguendo*, that under *Great Falls Tribune* a for-profit corporation has no privacy interest to be weighed against the public's right to know, the analysis does not end there. The right to privacy is not the only constitutional provision that may circumscribe the right to know provided by Article II, Section 9.

¶25 In *State ex rel. Smith v. Dist. Ct.*, 201 Mont. 376, 654 P.2d 982 (1982), this Court considered whether the right to know could be circumscribed by the right to a trial by an impartial jury. We explained in *Smith*:

the "Right to Know" provision of the Montana Constitution . . . is not absolute. It can be properly circumscribed when the right or interest against which it competes is *weighty or compelling*.

*Smith*, 201 Mont. at 383, 654 P.2d at 986 (emphasis added). In *Smith*, this Court held that a pretrial suppression hearing could be excluded from the public eye "only if dissemination of information acquired at the hearing would create a clear and present danger to the fairness of defendant's trial and no reasonable alternative means can be utilized to avoid the prejudicial effect of such information." *Smith*, 201 Mont. at 385, 654 P.2d at 987.

I acknowledge that in *Great Falls Tribune Co., Inc. v. Great Falls Pub. Schools*, 255 Mont. 125, 841 P.2d 502 (1992), this Court concluded that "pursuant to the clear language of Article II, Section 9, meetings may be closed *only* when the need for individual privacy exceeds the merits of public disclosure." *Great Falls Pub. Schools*, 255 Mont. at 131, 841 P.2d at 505 (emphasis added); *Cf., In re Lacy*, 239 Mont. 321, 325, 780 P.2d 186, 188 (1989) ("The *only* limitation on the right to receive this information is the constitutional right to privacy.") (emphasis added). In my view, these statements,

that it is only the right to individual privacy that can circumscribe the public's right to know, are both overbroad and unnecessary. Neither *Great Falls Pub. Schools* nor *Lacy* involved matters other than whether an individual's right to privacy outweighed the public's right to know. In *Great Falls Pub. Schools* the Court did not overrule, nor did it discuss, *Smith*. The Court has continued to cite to the language in *Smith* that the right to know "can be properly circumscribed when the right or interest against which it competes is weighty or compelling." *E.g., Great Falls Tribune*, ¶ 30 (quoting *Smith*, 201 Mont. at 383, 654 P.2d at 986). The rule in *Smith* should control in this case and I would overrule *Great Falls Pub. Schools* to the extent it suggests that it is only the right to privacy that may circumscribe the right to know.

¶26 In the present case, Elliott's argument necessarily raises the issue of whether the State's authority to tax, and its ability to enforce this authority, which is provided for by Article VIII of the Montana Constitution, is so sufficiently "weighty or compelling" that it may in appropriate circumstances circumscribe the right to know. *See Lacy*, 239 Mont. at 326, 780 P.2d at 189 (because the judiciary has authority over the interpretation of the Constitution, it is the courts' duty to balance the competing interests at issue in order to determine what, if any, information should be given to a party requesting information from the government under Article II, Section 9).

¶27 The U.S. Supreme Court has long recognized the importance of the power to tax:

It is admitted that the power of taxing the people and their property, is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to carry it.

*McCulloch v. Maryland*, 17 U.S. 316, 428 (1819). Article VIII of the Montana Constitution gives the Legislature the power to tax. At the 1972 Montana Constitutional Convention, the Revenue and Finance Committee went so far as to suggest that putting such a power in the Constitution was unnecessary, because "the power to tax is an inherent power of the state, a power already possessed by the state without any grant of authority." Montana Constitutional Convention, Revenue and Finance Committee Proposal, February 18, 1972, p. 579. In discussing Article VIII, Section 2, Delegate Rygg stated: "Of course, the power of taxation is the most important power a governmental body possesses, and it is equally important that this power never be treated lightly or bargained away." Montana Constitutional Convention, Verbatim Transcript, March 3, 1972, p. 1379.

¶28 The State requires revenue to provide for the common good, and taxation is of course necessary to raise this revenue. Without the power to tax, the government could not protect the right to know, the right of individual privacy, or any of the fundamental rights of the people. Therefore, I conclude that the State's interest in enforcing its authority to tax is sufficiently "weighty or compelling" that it may, in limited and appropriate circumstances, circumscribe the right to know.

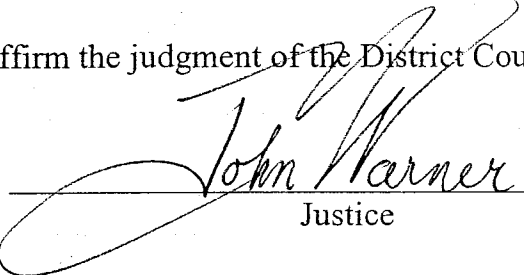
¶29 The record establishes that it is a critical component of the current corporate tax structure of Montana that the United States Internal Revenue Service (I.R.S.) provide information contained in United States corporate tax returns to the Montana Department of Revenue. The system would simply not work without such information. 26 U.S.C. § 6103(p)(8) prohibits the I.R.S. from disclosing information about a federal tax return to

any State unless that State adopts a confidentiality provision such as § 15-31-511, MCA. Thus, if this Court were to conclude that § 15-31-511 is of no effect, it follows that the I.R.S. would stop providing information to DOR, and the current Montana system for levying taxes on for-profit corporations would fail.

¶30 The record also establishes that Montana does not have the resources to establish a tax system which could effectively compile and process the necessary information to levy and collect taxes from the many for-profit corporations that do business in this State, without tax information gathered and provided by the I.R.S.

¶31 I conclude that in this limited circumstance, the confidentiality provisions of § 15-31-511, MCA, which flow from Article VIII of the Montana Constitution, are sufficiently weighty and compelling to circumscribe the public's right to know provided in Article II, Section 9.

¶32 It is for this reason that I vote to affirm the judgment of the District Court.

  
Justice

Wisconsin

UNOFFICIAL TEXT

Chapter 71

Subch. XII of Ch. 71

71.78

X Hide

Start

Up

71.78

**71.78 Confidentiality provisions.**

71.78(1)



**(1) Divulging information.** Except as provided in subs. (4), (4m) and (10), no person may divulge or circulate or offer to obtain, divulge or circulate any information derived from an income, franchise, withholding, fiduciary, partnership, limited liability company or gift tax return or tax credit claim, including information which may be furnished by the department as provided in this section. This subsection does not prohibit publication by any newspaper of information lawfully derived from such returns or claims for purposes of argument or prohibit any public speaker from referring to such information in any address. This subsection does not prohibit the department from publishing statistics classified so as not to disclose the identity of particular returns, or claims or reports and the items thereof. This subsection does not prohibit employees or agents of the department of revenue from offering or submitting any return, including joint returns of a spouse or former spouse, separate returns of a spouse, individual returns of a spouse or former spouse and combined individual income tax returns, or from offering or submitting any claim, schedule, exhibit, writing or audit report or a copy of, and any information derived from, any of those documents as evidence into the record of any contested matter involving the department in proceedings or litigation on state tax matters if, in the department's judgment, that evidence has reasonable probative value.

71.78(1m)

**(1m) Browsing prohibited.**

71.78(1m)(a)



(a) No person, except the person who filed the return or claim, may inspect a return or claim that is filed under this chapter unless that person does so in performing the duties of his or her position. Violation of this paragraph by a state employee is grounds for dismissal.

71.78(1m)(b)



(b) If any person is charged with a violation of par. (a), the secretary of revenue shall notify each taxpayer whose return or claim was improperly inspected by that person.

71.78(1m)(c)



(c) Any person who is notified under par. (b) may bring an action for damages in regard to the inspection.

71.78(2)



**(2) Disclosure of net tax.** The department shall make available upon suitable forms prepared by the department information setting forth the net Wisconsin income tax, Wisconsin franchise tax or Wisconsin gift tax reported as paid or payable in the returns filed by any individual or corporation, and any amount of delinquent taxes owed, as described in s. 73.03 (62), by any such individual or corporation, for any individual year upon request. Before the request is granted, the person desiring to obtain the information shall prove his or her identity and shall be required to sign a statement setting forth the person's address and reason for making the request and indicating that the person understands the provisions of this section with respect to the divulgement, publication or dissemination of information obtained from returns as provided in sub. (1). The use of a fictitious name is a violation of

this section. Within 24 hours after any information from any such tax return has been so obtained, the department shall mail to the person from whose return the information has been obtained a notification which shall give the name and address of the person obtaining the information and the reason assigned for requesting the information. The department shall collect from the person requesting the information a fee of \$4 for each return.

71.78 - ANNOT.



**NOTE Sub. (2) is shown as amended eff. 1-1-06 by 2005 Wis. Act 25. Prior to 1-1-06 it reads:**

71.78 - ANNOT.



(2) **Disclosure of net tax.** The department shall make available upon suitable forms prepared by the department information setting forth the net Wisconsin income tax, Wisconsin franchise tax or Wisconsin gift tax reported as paid or payable in the returns filed by any individual or corporation for any individual year upon request. Before the request is granted, the person desiring to obtain the information shall prove his or her identity and shall be required to sign a statement setting forth the person's address and reason for making the request and indicating that the person understands the provisions of this section with respect to the divulgement, publication or dissemination of information obtained from returns as provided in sub. (1). The use of a fictitious name is a violation of this section. Within 24 hours after any information from any such tax return has been so obtained, the department shall mail to the person from whose return the information has been obtained a notification which shall give the name and address of the person obtaining the information and the reason assigned for requesting the information. The department shall collect from the person requesting the information a fee of \$4 for each return.

71.78(3)



(3) **Disclosure limitation.** The information described in sub. (2) shall not be made available to any nonresident or to any resident who is making the request for such information for the use or benefit, directly or indirectly, of a nonresident person or firm or a foreign corporation except to the extent that similar information in the state of residence of such person or firm or the state of incorporation of such foreign corporation is made available to residents of Wisconsin or Wisconsin corporations. As part of the statement required by sub. (2), the department shall require any person desiring to obtain such information to declare whether the person is a nonresident of the state and whether the information is desired for the use or benefit of a nonresident person or firm or a foreign corporation. No copy of any return shall be supplied to any person except as permitted by sub. (4).

71.78(4)



(4) **Persons qualified to examine returns for specified purposes.** Subject to subs. (5) and (6) and to rules of the department, any returns or claims specified under sub. (1) or any schedules, exhibits, writings or audit reports pertaining to the returns or claims on file with the department shall be open to examination by only the following persons and the contents thereof may be divulged or used only as follows:

71.78(4)(a)



(a) The secretary of revenue or any officer, agent or employee of the department.

71.78(4)(b)



(b) The attorney general and department of justice employees.

71.78(4)(c)



(c) Members of any legislative committee on organization or its authorized agents provided the examination is approved by a majority vote of a quorum of its members and the tax return or claim information is disclosed only in a meeting closed to the public. The committee may disclose tax return or claim information to the senate or assembly or to other legislative committees if the information does